

Message Text

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ORIGIN AF-06

INFO OCT-01 ISO-00 TRSE-00 PM-03 DODE-00 SSO-00 CIAE-00

INR-07 NSAE-00 INRE-00 L-03 SP-02 AID-05 IGA-01 EB-07

SS-15 NSC-05 NSCE-00 MC-02 OMB-01 /058 R

DRAFTED BY AF/I:JAANDEREGG:PCS

APPROVED BY AF/I:JAANDEREGG

TREASURY: MR. CROSSWHITE

AF/E:E.SHIPPY

PM/SAS:RSMITH

OASD/ISA:COL SIGLER

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FM SECSTATE WASHDC

TO AMEMBASSY NAIROBI IMMEDIATE

C O N F I D E N T I A L STATE 134280

E.O. 11652:GDS

TAGS:MASS KE US

SUBJECT: KENYA PROGRAM: FMS CREDITS

REF: NAIROBI 4705

1. QUESTION OF THREE YEAR GRACE PERIOD BEING CONSIDERED BY STATE, DOD AND TREASURY. ANSWER ON THAT AND USE OF MAP TRAINING FUNDS WILL FOLLOW.

2. CONTENT OF AGREEMENTS TO BE SIGNED IS ESSENTIALLY FINANCIAL. DETAILS OF MILITARY ITEMS WOULD BE NEGOTIATED AFTER CREDIT AGREEMENT IS SIGNED.

3. FOLLOWING IS TEXT OF TREASURY'S SUGGESTED LANGUAGE FOR KENYAN LEGAL ADVISOR OPINION, WHICH WOULD EMPOWER THE KENYAN CHARGE TO SIGN THE LOAN AGREEMENT AND THE PROMISSORY
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NOTE: " OPINION OF THE LEGAL ADVISER OF THE MINISTRY OF

(BLANK) GOVERNMENT OF KENYA.

THIS LEGAL OPINION IS RENDERED IN SATISFACTION OF THE REQUIREMENTS OF THE LOAN AGREEMENT BETWEEN THE GOVERNMENT OF KENYA (HEREINAFTER REFERRED TO AS THE 'GOVERNMENT'), AND THE UNITED STATES FEDERAL FINANCING BANK (HEREINAFTER REFERRED TO AS THE "FFB"), DATED (BLANK), AND THE PROMISSORY

NOTE ISSUED BY THE GOVERNMENT DATED (BLANK), GUARANTEED BY THE DEFENSE SECURITY ASSISTANCE AGENCY OF THE UNITED STATES DEPARTMENT OF DEFENSE (HEREINAFTER REFERRED TO AS "DSAA"), DATED (BLANK), AND PROVIDING FOR ADVANCES IN THE AGGREGATE AMOUNT OF FIVE MILLION DOLLARS (\$5,000,000).

I, THE UNDERSIGNED (TYPE NAME), LEGAL ADVISER TO THE MINISTRY OF (BLANK, OF THE GOVERNMENT OF KENYA, DO HEREBY CERTIFY AS FOLLOWS:

1. THE GOVERNMENT HAS FULL PWOER, AUTHORITY AND LEGAL RIGHT TO INCUR THE INDEBTEDNESS CONTEMPLATED IN THE ABOVE DESCRIBED LOAN AGREEMENT ON THE TERMS AND CONDITIONS CONTAINED THEREIN, AND TO EXECUTE, DELIVER AND PERFORM THE SAID LOAN AGREEMENT AND THE PROMISSORY NOTE THEREUNDER.

2. THE EXECUTION, DELIVERY AND PERFORMANCE OF THE SAID LOAN AGREEMENT AND PROMISSORY NOTE WILL NOT VIOLATE ANY PROVISIONS, OF, AND HAVE BEEN DULY AND VALIDLY AUTHORIZED UNDER THE LAWS OF THE GOVERNMENT, AND ALL ACTIONS NECESSARY TO AUTHORIZE THE BORROWINGS THEREUNDER AND THE EXECUTION, DELIVERY AND PERFORMANCE OF THE SAID LOAN AGREEMENT AND THE PROMISSORY NOTE HAVE BEEN DULY TAKEN.

3. THE SAID LOAN AGREEMENT AND THE PROMISSORY NOTE HAVE BEEN DULY EXECUTED AND DELIVERED BY PERSONS THEREUNTO DULY AUTHORIZED AND CONSTITUTE THE VALID LEGALLY BINDING, DIRECT AND UNCONDITIONAL GENERAL OBLIGATIONS OF THE GOVERNMENT ENFORCEABLE IN ACCORDANCE WITH THEIR CONFIDENTIAL

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RESPECTIVE TERMS.

4. THE FOLLOWING OFFICIAL(S) OF THE GOVERNMENT, (BLANK), IS (ARE) DULY AUTHORIZED TO EXECUTE AND DELIVER THE SAID LOAN AGREEMENT AND THE PROMISSORY NOTE.

5. THE FOLLOWING OFFICIAL(S) OF THE GOVERNMENT, (BLANK), IS (ARE) DULY AUTHORIZED TO EXECUTE AND DELIVER SUCH

OTHER DOCUMENTS AS MAY BE REQUIRED UNDER THE SAID LOAN AGREEMENT AND, AS MAY BE APPROPRIATE, TO SPECIFY THAT THE FUNDS ADVANCED UNDER THE SAID LOAN AGREEMENT AND PROMISSORY NOTE ARE TO BE TRANSFERRED BY THE FFB (A) TO THE RESPECTIVE ACCOUNTS OF THE UNITED STATES DEPARTMENT OF ARMY, NAVY, OR AIR FORCE, OR (B) TO A TRUST FUND ACCOUNT ADMINISTERED BY THE U.S. DEPARTMENT OF DEFENSE FOR THE PURPOSE OF MAKING PAYMENTS TO U.S. COMMERCIAL

SUPPLIERS ON BEHALF OF THE GOVERNMENT.

6. NO TAX OR DUTY, OF WHATSOEVER NATURE, IMPOSED OR LEVIED BY THE GOVERNMENT OR ANY TAXING AUTHORITY THEREIN OR THEREOF IS PAYABLE ON ACCOUNT OF THE CREATION, ISSUE OR TRANSFER OF SUCH LOAN AGREEMENT OR NOTE OR IS PAYABLE ON ACCOUNT OF, OR IS REQUIRED TO BE WITHHELD FROM THE PAYMENT OF INTEREST OR PRINCIPAL IN RESPECT OF THE LOAN AGREEMENT OR NOTE, PROVIDED THAT THIS PARAGRAPH SHALL NOT APPLY IF THE FFB SHOULD ASSIGN THE LOAN AGREEMENT OR NOTE AND THE ASSIGNEE OR ITS ASSIGNS (EITHER AS HOLDER OR RECORD OR AS BENEFICIAL OWNER) IS EITHER A RESIDENT OR NATIONAL OF THE GOVERNMENT OR A CORPORATION, PARTNERSHIP OR OTHER JURIDICAL ENTITY ORGANIZED UNDER ITS LAWS.

7. THIS OPINION EXTENDS TO ALL PROVISIONS OF THE LOAN AGREEMENT AND NOTE.

8. ANY ASSIGNEE OF THE LOAN AGREEMENT OR NOTE MAY RELY ON THIS OPINION.

DATE (BLANK) (UNDERSCORE)

LEGAL ADVISER

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MINISTRY OF (BLANK)

GOVERNMENT OF KENYA KISSINGER

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NNN

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